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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,461

Applicant(s)

PRZYGODA, GEORGE M.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004 and 06 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/24/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Election/Restriction***

Applicant's election with traverse of Group I, i.e., claims 1-6, in the reply filed on January 6, 2006 is acknowledged. The traversal is on the ground(s) that "that both the class and subclasses are so closely related with respect to this rack... that it is believed that a single invention is disclosed. For example, claim 7 is really a consolidation of claims 1-3, and should not entail any further search for prior art, than what will be required to search claims 1-6". This is found persuasive and hence claim 7 will be examined with the elected group of claims 1-6.

Since applicant has not argued claim 8, claim 8 is drawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Thus, the requirement is therefore made FINAL.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. *Therefore*, the bottles having a pin inserted into the neck, as called for in claims 1 and 7, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

Art Unit: 3634

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claims 1 and 7 are objected to because of the following informalities:

In line 10 of claim 1 and line 15 of claim 7, it is suggested that a word, such as --therein-- or --therethrough-- be inserted after "holes".

In lines 8 and 12 of claim 7, it appears that --a-- should be inserted before "narrower".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the *first* paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification and drawings in such a way as to enable one skilled which it is most nearly connected, to make and/or use the invention in the art to which it pertains, or with. *In particular*, the specification (see the paragraph bridging pages 10 and 11) does not contain support for the recitation "a collector places a plurality of bottles upon said bottom shelf and said lateral shelves

Art Unit: 3634

and inserts a pin through said hole in said lateral shelf and into the top and the neck of a bottle to secure the bottles for display" (see the last 3-4 lines of claims 1 and 7).

The following is a quotation of the *second* paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the word "means", i.e., "means to attach" in line 3 and "a means to receive" in line 5, is preceded by the no word(s) in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). To correct this, it is suggested that "means to attach" be changed to --attaching means-- or --means for attaching-- and that "a means to receive" be changed to --means for receiving-- or --receiving means--.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: (a) between the "means to attach" (see line 3) and the bottom shelf and (b) between the "means to receive" (see line 5) and the sidewalls.

Claim 1 recites the limitation "said sidewall" in line 12 (see also line 2 of claim 4 and each of lines 17-19 of claim 7). There is insufficient antecedent basis for this limitation in the

Art Unit: 3634

claim. It is noted that "sidewalls", i.e., plural, have been set forth in line 4 and thus it is unclear if applicant is referring to one or both of the sidewalls in line 12. *Similarly*, the recitations "said hole in said lateral shelf" in lines 18-19 of claim 1 (see also line 22 of claim 7), "said brace" in line 1 of claim 4, "said peg" in lines 9 and 13 of claim 7 lack proper antecedent basis in the claims.

The use of the term "places" in line 17 of claim 1 renders the claim indefinite since this is an improper use of a positive recitation. *In particular*, the bottles are being functionally recited and it is assumed that a collector is not being positively claimed. *Thus*, the use of the term "places" appears to set forth an improper method step in an apparatus claim.

It is unclear if "a pin" recited in line 18 of claim 1 is one of the pins set forth in line 11 of claim 1 or whether another pin is being required, and thus the metes and bounds of the claim cannot be properly ascertained.

The use of the term "as" in line 7 of claim 2 and in line 4 of claim 3 renders the claims indefinite since it is unclear what applicant is trying to set forth and thus claim, and therefore the metes and bounds of the claim cannot be properly ascertained.

Claim 7 recites the limitation "the bottom slot" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: between the narrowed width, the aperture and the lateral shelves (see line 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,082,389 (Stewart '389) in view of U.S. Patent No. 2,630,924 (Vacanti '924).

Stewart '389 a rack comprising a bottom shelf (2), generally rectangular in shape with two opposite extending integral ends (14), each end (14) having a means to attach (18); two mutually parallel sidewalls (7 and 8), generally rectangular in shape, having a means to receive (15) whereby said bottom shelf (2) installs perpendicular to and between said sidewalls (7 and 8); two or more lateral shelves (2), generally rectangular in shape similar to the bottom shelf with two opposite extending integral ends (14), each end (14) having attaching means (18), the shelves (2) install between the sidewalls (7 and 8) and are parallel to each other and to the bottom shelf (2) and, one or more braces (4), generally linear in shape, connecting to the sidewalls (7 and 8) proximate to the bottom shelf (2) and parallel to the bottom shelf and perpendicular to the sidewalls (7 and 8); whereby, the bottom shelf, the sidewalls, and the shelves form a rectangular configuration (see Figure 1) with the lateral shelves installed within the configuration; the ends having a width narrower than the width of the bottom shelf the shelves and an aperture (18) through the ends perpendicular to the width of the ends; and, a plurality of pegs (19 - see column 2, lines 35-41) having a narrow portion and an opposite wide portion forming a tapered shape; wherein the narrow portion of the pegs inserts into the apertures

Art Unit: 3634

(18) as the attaching means; the sidewalls (7 and 8) have a pattern of slots (15) perpendicular to and spaced along the longitudinal axis of the sidewalls through which the ends (14) of the shelves (2) are inserted, thereby defining the receiving means.

The claims differ from Stewart '389 in requiring: (a) the shelves to have a pattern of holes and a plurality of pins for insertion into said holes (claim 1); and (b) the pattern of holes permitting bottles on adjacent shelves to align vertically (claim 5) or to stagger (claim 6).

Insomuch as the claims are best understood in view of the Section 112, 1st paragraph rejection, advanced above, Vacanti '924 teaches the use of pins (40) extending through holes (30) in a plurality of shelves (14-18) so that the pins are aligned and thus the items would be aligned.

With respect to (a), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelves of Stewart '389 with a pattern of holes and pins inserted therein, for assisting in holding of items placed on the pin, thereby increasing the structural support and stability of the items within the rack.

With respect to (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made that items could be placed on every other one of the pins so that the items would thus be staggered vertically, thereby increasing structural support and rigidity of the rack.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart '389 in view of Vacanti '924 as applied to claims 1-3, 5, and 6 above, and further in view of U.S. Patent No. 6,675,979 (Taylor '979).

Art Unit: 3634

The claims differ from the above references in requiring the braces to extend beyond the width of the sidewall.

Taylor '979 teaches the use of braces (102) whereby the braces (102) extend forward and rearward, i.e., beyond the width, of the sidewalls (104) to which the braces (102) are attached so that the braces are attached adjacent a bottom shelf (101).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Stewart '389 with the braces attached to the bottom of the sidewalls, as taught by Taylor '979, for increased support and stability of the rack against tipping thereof.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart '389 in view of Vacanti '924 and Taylor '979.

Stewart '389 discloses the rack as advanced above.

The claims differ from Stewart '389 in requiring: (a) the shelves to have a pattern of holes and a plurality of pins for insertion into said holes; and (b) the braces to extend forward and rearward of the sidewall.

With respect to (a), inasmuch as the claims are best understood in view of the Section 112, 1st paragraph rejection, advanced above, Vacanti '924 teaches the use of pins (40) extending through holes (30) in a plurality of shelves (14-18) so that the pins are aligned and thus the items would be aligned.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelves of Stewart '389 with a pattern of holes and pins

Art Unit: 3634

inserted therein, for assisting in holding of items placed on the pin, thereby increasing the structural support and stability of the items within the rack.

With respect to (b), Taylor '979 teaches the use of braces (102) whereby the braces (102) extend forward and rearward, i.e., beyond the width, of the sidewalls (104) to which the braces (102) are attached so that the braces are attached adjacent a bottom shelf (101).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Stewart '389 with the braces attached to the bottom of the sidewalls, as taught by Taylor '979, for increased support and stability of the rack against tipping thereof.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

March 2, 2006